CF0000061425

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CR. APPEAL NO. 1471 OF 1997

Maniram son of Durgaprasad Yadav, aged 19 years, resident of Lavan, P.S. Kasdol, District Raipur, MP. .. APPELLANT (IN JAIL)

VS.

THE STATE OF M.P. .. RESPONDENT

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE.

AFR

(30)

HIGH COURT OF CHHATTISGARH AT BILASPUR.

Criminal Appeal No.1471/1997.

Maniram ... Appellant.

Vs.

State of Madhya Pradesh
(Now Chhattisgarh). ... Respondent.

* * * * * * *

J U D G M E N T

Hon.Shri R.S.Garg, J. :

The appellant being aggrieved by the judgment dated 3.7.97. passed in Sessions trial No.437/94, by the learned Additional Sessions Judge, Baloda Bazar, convicting the appellant under Section 376(2)(f) I.P.C., sentencing him to undergo R.I. for 10 years, pay fine of Rs.2000/-; in default of payment of fine to undergo further R.I. for one year and Under Section 354 I.P.C. sentencing him to undergo R.I. for 2 years and pay fine of Rs.1000/-; in default of payment of fine to undergo further R.I. for 6 months, has filed this appeal.

2). Learned counsel for the appellant submits that the trial Court levelled the charges against the accused for offences punishable under Sections 376 read with Section 511 I.P.C. and under Section 354 I.P.C. During the course of trial and after the evidence was brought on record, the

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trial Court did not amend the charge nor required the appellant to answer a charge under Section 376 (2)(f) I.P.C., but in its final judgment despite recording that charges under Section 376/511 I.P.C. were levelled against the appellant, convicted him under Section 376(2)(f) I.P.C. She submits that the evidence brought on record is contrary to the original case and without modifying and amending the charges, the Court could not convict the appellant under Section 376(2)(f)I.P.C.

3). Faced with the situation and legal impedi-ment, learned counsel for the State submits that even if the accused is not liable to be punished under Section 376(2)(f) I.P.C, he can still be convicted under Section 376/511 I.P.C. He further submits that to provide proper defence to the appellant, it would be in the interest of justice to remit the case back to the trial Court with a direction to amend the charge and give proper opportunity to cross-examine all the witnesses afresh and prove his defence.

4). I have heard the parties.

5). On 11-3-1995, the Court below levelled the following charges against the accused:

यह कि दिनांक 19/8/94 को रात 20.00 बजे अथवा उसके करीब ग्राम लवन में अपने अवयस्क बिमलाबाई के साथ जबरन संभोग करने का

(32)

प्रयास किया और आपके द्वारा इस प्रकार बलात्संग का प्रयास करके वह अपराध किया जो धारा 378 सपठित धारा 511 भारतीय दण्ड संहिता के अन्तर्गत दण्ड के योग्य होकर मेरे संज्ञान में है ।

द्वितीय :- उक्त दिनांक, स्थान व समय पर आपने बिमलाबाई के शीलभंग करने के आशय से उस पर आपराधिक बल का प्रयोग किया आपका यह कार्य धारा 354 भारतीय दण्ड संहिता के अन्तर्गत दण्ड के योग्य होकर मेरे संज्ञान में हैं ।

6). From a perusal of charge order, it would clearly appear that the Court was requiring the appellant to answer a charge punishable under Section 376 read with Section 511 I.P.C., so also charge under Section 354 I.P.C. From the proceedings recorded by the trial Court it does not appear that at any ~~point~~ time during the course of trial or after the accused had entered in the defence , it ever amended the charge.

7). In the opinion of this Court, it would not be in accordance with law to convict an accused for a charge which was never framed against the accused. Provisions relating to framing of charge as contained in Code of Criminal Procedure clearly say that the Court must require the accused to answer a charge for which he may be held liable. If the charge was for an offence under Section 376/511 I.P.C., then, conviction of the accused for substantive offence under Section 376(2)(f)

I.P.C. would not only be bad but would be contrary to law. The procedure adopted by the learned Court below is un-heard of and is not known to law. I could understand a case where during the course of trial or after the prosecution had led its evidence, the Court recorded its formal opinion and proceeded to amend the charge. In the present case, the accused was never informed that he was likely to be convicted for substantive offence punishable under Section376(2)(f)I.P.C. It is also to be seen that in a case of attempt of commission of offence, punishment would be half of the punishment which can be awarded to the accused if he had committed or completed the offence. The Court below has ignored the basic principles of law and erred in convicting the appellant under Section 376(2)(f) I.P.C. For this short reason, the judgment delivered by the Court below deserves to and is accordingly set aside. The matter is remitted to the Court below with a direction that it shall now amend the charge , again record the statements of the accused and if the accused wants to further cross-examine the witnesses in view of the amended charges, then, all the witnesses examined by the prosecution shall be directed to remain in attendance for further cross-examination. If the accused wants to lead ~~this~~ evidence in his defence, then,proper opportunity shall be given to him. On completion of the trial in accordance with the directions

aforesaid, the trial Court shall re-hear the parties and decide the matter in accordance with law. The appellant shall be produced before the trial Court on 27th August,2001. The case shall be restored to its original number .

8). At this stage it is necessary to observe that the accused appears to be in jail since after the date of his conviction i.e. 3.7.97.,therefore, if the appellant makes an application for his release on bail, the trial Court shall decide the application in accordance with law taking into consideration the pre-trial detention of the accused.

9). The appeal to the extent indicated above is allowed. The records of the Court below be immediately sent back.

C.C. to the parties within 3 days.

Sd/-
R.S. Garg
Judge
23-07-2001.

/Subbu/.